

# **EXHIBIT “B”**

## **Part 4 of 7**

DEPOSITION OF JOSEPH J. HOCHREITTER, JR., 2/27/07

1 most of them that they were in  
2 operation, they were manufacturing,  
3 they were producing wastes during  
4 that period of time.

5 Q. And given that the Boarhead  
6 Farms site was purchased by DeRewal  
7 in late 1969 and that DeRewal was  
8 arrested in early 1977, isn't that  
9 more closer to seven years of  
10 duration than eight years of  
11 duration?

12 MS. WRIGHT: Objection.

13 THE WITNESS: It is not an  
14 exact eight years. We chose to round  
15 it to eight years because we had  
16 information that suggested that as  
17 early as the middle of 1969 there may  
18 have been some waste disposed of at  
19 the site, and as far as the  
20 termination date of 1977, there's  
21 some ambiguity as to whether all  
22 activities at Boarhead Farms stopped  
23 at a particular point in time.

24 So to be conservative, we



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1 felt that if we are going to round  
2 somewhere between seven and eight  
3 years we would round it up to eight  
4 years.

5 BY MS. TROJECKI:

6 Q. In Paragraph 2, what is  
7 meant by the parenthetical at the end  
8 of that paragraph?

9 A. All right, let me read it.  
10 If we had enough  
11 information to give us insight on the  
12 quantity, the amount or the mass of  
13 material that was produced, then we  
14 tabulated it.

15 If all we had was a visual  
16 or a narrative description of wastes  
17 with no quantity, then we simply did  
18 a qualitative description, we passed  
19 along what we saw in the evidentiary  
20 material.

21 Q. Tell me how were the total  
22 quantities of waste type physically  
23 calculated.

24 A. Well, quantities -- first



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1 of all, it wasn't always quantities.  
2 There were reports in mass, typically  
3 pounds, as well as quantities,  
4 typically gallons, but not always.  
5 And we did not make any attempt to  
6 transfer pounds into gallons or  
7 gallons into pounds; we simply took  
8 the reporting as it was provided to  
9 us and tabulated it.

10 The question gets to the  
11 heart of how we put this report  
12 together, so, in broad brush, what we  
13 did was, we compiled all of the  
14 information we were given and we saw  
15 that, in almost every instance, we  
16 had wide disparities in terms of the  
17 quantity and quality of information  
18 provided.

19 For some of the companies,  
20 plaintiffs and settled defendants,  
21 there was very little information and  
22 for some there was quite a bit, but  
23 none of the bodies of information was  
24 considered complete for the entire

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1 period of record.

2 And as a result where we  
3 felt that we -- and we stated in here  
4 the criteria that we used for  
5 extrapolating the unknown time  
6 frames -- we extrapolated a total  
7 quantity for the period of interest.

8 Q. So how did you know whether  
9 a data set was complete or not?

10 A. Quite simply, if somebody  
11 said that from March to June of 1974  
12 they produced X amount of pounds of  
13 ammonia, we accepted, and I believe  
14 we state in here, we accept all  
15 statements of that sort at face  
16 value. We did not attempt to do an  
17 independent assessment as to whether  
18 the reported volume or mass was  
19 accurate. We simply took it at face  
20 value.

21 However, there were a  
22 number of instances, as you can see  
23 in the tables, where we had detailed  
24 information from perhaps Manford



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1 DeRewal, his records or 104(e)  
2 responses or other factual  
3 information for parts of the eight-  
4 year period of interest, and then  
5 there was no information for other  
6 parts of the eight-year period of  
7 interest.

8 Q. Any other reasons why you  
9 would conclude that a data set was  
10 complete or not?

11 A. If you are taking  
12 everything that is presented to you  
13 at a face value, if you have two  
14 pieces of information that appear to  
15 be representing the same body of  
16 wastes and representing it  
17 differently, we reported both  
18 occurrences, we did not attempt to --  
19 because we had no way, I had no  
20 expertise and no original knowledge  
21 to be able to say, Oh, this reporting  
22 is correct and this reporting isn't.

23 We attempted to do the best  
24 we could with the information that we

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1 had to understand if, just using as  
2 an example, ammonia is the  
3 constituent of interest, that we are  
4 tabulating and we have two years'  
5 worth of data, and it might be  
6 scattered over four or five years,  
7 it's reasonable, then, to develop an  
8 annual average for that waste stream  
9 and then, ultimately, an eight-year  
10 period of interest average for that  
11 waste stream.

12 And, of course, that's all  
13 predicated on our understanding that  
14 that process that produced the waste  
15 was likely in operation during that  
16 period of time.

17 Q. So suppose you had an  
18 invoice a month for a particular  
19 company, you know, taking a  
20 hypothetical, if you had, take,  
21 American Cyanamid, an invoice every  
22 month for the entire eight years from  
23 DCT that references some type of  
24 waste product that was picked up by

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1 DCT, would you say that that was  
2 complete?

3 A. I would say it's as  
4 complete as the reported record will  
5 allow us to ascertain, yes.

6 Q. What do you mean by that?

7 A. There may be,  
8 hypothetically, of course, waste  
9 streams that there is no record for.  
10 It might be that for ammonia, our  
11 hypothetical example, that  
12 hypothetical eight-year period of  
13 record is very complete and accurate,  
14 but there might also have been other  
15 waste streams that went out with the  
16 ammonia where we have no record  
17 whatsoever or we have partial record.

18 In that instance I have no  
19 way of independently verifying --

20 Q. The other waste types?

21 A. -- the other waste types.  
22 And I'd have to take at face value  
23 the material reporting, the  
24 quantities and nature of that



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1 material, whether it was drummed or  
2 bulked or however, pretty much at  
3 face value.

4 Now, we did do some  
5 interpretation. There were invoices,  
6 for example, that said we picked up a  
7 tanker wagon full of material, and  
8 you could go through the record and  
9 get a pretty good idea of what a  
10 tanker wagon typically was in terms  
11 of volume.

12 But we were pretty  
13 emphatical about making certain that  
14 we recorded and we took at face value  
15 what people said. We did not offer  
16 editorial comment, if you will, on  
17 the reporting. And we had no  
18 alternate sources of information that  
19 would allow us to do that, in most  
20 instances.

21 Q. So just getting back to the  
22 hypothetical that I raised, which  
23 was, if there was an invoice a month,  
24 if it was all for one particular

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1 waste type, say, it was all for  
2 ammonia, just to use a hypothetical,  
3 would you say that the records for  
4 ammonia specifically would be  
5 complete?

6 A. I would accept it at face  
7 value. Keep in mind, there may be  
8 three manufacturing processes that  
9 produce ammonia, and what we are  
10 seeing is only one manufacturing  
11 process' records of waste, and we  
12 don't know about the other two.

13 Again, what we were  
14 methodical in doing is taking your  
15 client's reports of what they did,  
16 and pretty much took them at face  
17 value. If they had waste tickets for  
18 eight years, month by month, for  
19 ammonia, in the hypothetical, we  
20 accepted that at face value and  
21 reported it.

22 Does that mean that there  
23 couldn't have been more waste ammonia  
24 generated, either through that

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1 process or some other process on the  
2 site? No, it doesn't mean that, but  
3 we have no knowledge that would allow  
4 us to opine as to any other. We are  
5 simply taking the documentation at  
6 face value.

7 Q. So in that instance, is  
8 there a basis to extrapolate in that  
9 instance? I mean, how did you decide  
10 when you were going to extrapolate  
11 and when you weren't?

12 A. Well, I believe we wrote in  
13 the expert report the criteria that  
14 we used for determining when we would  
15 extrapolate. If you know where that  
16 is, I don't know exactly, but I would  
17 prefer to go right to what we said.

18 Q. Okay. Is that laid out in  
19 the methodology?

20 A. I believe so. I believe  
21 so.

22 Q. Can you point me to where  
23 you are referring?

24 A. You know, I don't know

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1 exactly where in this section it is,  
2 so I would have to read it. If you  
3 have already identified it, it might  
4 speed us up to take us there.

5 Q. Well, in Paragraph 4 --

6 A. Paragraph 4 is probably  
7 where we would have this. Okay.

8 Paragraph 4 provides the  
9 general criteria that we used. If  
10 there was indication that, in our  
11 hypothetical example, the ammonia  
12 process didn't come on line until  
13 1973 or that it was discontinued  
14 after 1975, then we would not do the  
15 extrapolation.

16 In turn, if we only had an  
17 incidental report of a couple drums  
18 of something leaving company X's  
19 site, there's not enough information  
20 to be able to credibly extrapolate  
21 because this is -- we don't even know  
22 what kind of a subset of the total  
23 waste stream this represents over  
24 what period of time.



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1                   And, in that case, we  
2                   simply reported what was in the  
3                   record and, if it was reported as a  
4                   volume, we put it in the table and  
5                   said it was probably a minimum volume  
6                   or a minimum mass.

7                   Q.       So if you knew a company --  
8                   is the reverse of that, then, if  
9                   manufacturing processes did not  
10                  change at a company, then you would  
11                  assume that, because they generated  
12                  some quantity of waste in some  
13                  period, that they generated the same  
14                  quantity throughout the entire eight  
15                  years; is that correct?

16                 A.       That is correct.

17                 Q.       And was there any  
18                  additional criteria that was applied  
19                  with respect to how much information  
20                  you had to have; in other words,  
21                  suppose you knew American Cyanamid  
22                  processes were the same throughout  
23                  the eight-year period and you only  
24                  had records for one month's ammonia



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1 waste disposal, would that be enough  
2 to extrapolate throughout the eight-  
3 year period?

4 A. It would be a judgment  
5 call. You could probably state that,  
6 if we knew the processes hadn't  
7 changed over eight years, that a  
8 quantity of ammonia had been  
9 generated for each month or each  
10 reporting cycle for that entire  
11 eight-year period.

12 The problem, though, is if  
13 the quantities vary from reporting  
14 cycle to reporting cycle and we have  
15 only got one piece of information and  
16 we don't know whether that's a  
17 theoretical average monthly amount,  
18 whether it is biased high or biased  
19 low, and that's where judgment comes  
20 into play, and, ultimately, I made  
21 those calls, whether we felt we could  
22 extrapolate or not.

23 Q. Can you explain to me in  
24 Paragraph 3 of your report where you



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1 discuss that sometimes you used a  
2 monthly average and sometimes you  
3 used an annual average?

4 A. Sure, if I may, let me read  
5 the section.

6 Q. Sure.

7 A. Well, in most instances, in  
8 fact, I think in all instances, where  
9 period of record averages were, you  
10 know, we quantified over the eight-  
11 year period of record, we had annual  
12 averages, we computed those.

13 We would calculate a  
14 monthly average where there was  
15 enough data that would allow us to  
16 comfortably say, yes, we have enough  
17 density of data to be able to say  
18 this is what an average monthly  
19 volume or mass would look like.

20 Beyond that we would have  
21 to get into individual specific cases  
22 and we can talk about the rationale  
23 that would be applied for each one.

24 Q. And so when you say in the



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1 last sentence of Paragraph 3,  
2 "Depending on the availability of  
3 multiple data entries," is there a  
4 number or criteria for what  
5 constitutes multiple?

6 A. No, we did not -- we did  
7 not feel we could sit there and say  
8 for an eight-year period of interest  
9 we had to have X number of records in  
10 order to make an average.

11 Q. In Paragraph 4, the second  
12 sentence that starts, "If multiple  
13 monthly or yearly data were not  
14 available or if there was reason to  
15 believe that the operation that  
16 generated the wastes might have  
17 changed substantively; i.e., ceased  
18 entirely or increased by more than a  
19 factor of two for any plaintiff or  
20 settled defendant, extrapolation was  
21 not performed."

22 Do you see that sentence?

23 A. Yes, I do.

24 Q. Does that account for



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1 decrease in waste generation?

2 A. I'm not sure I understand  
3 the question.

4 Q. The question is that you --

5 A. What do you mean by a  
6 decrease in --

7 Q. If you don't have any  
8 evidence that the waste changed  
9 substantively, and your i.e. means  
10 that it either ceased completely or  
11 that it actually increased, did you  
12 factor into your analysis as to  
13 whether extrapolated or not at all,  
14 whether waste generation might have  
15 decreased?

16 A. We accepted the possibility  
17 of waste over time increasing,  
18 staying the same and decreasing, and  
19 to the extent that the evidence would  
20 allow us to make a determination, I  
21 think the underlying assumption was,  
22 if we don't have information that  
23 tells us that it decreased,  
24 increased, or ceased, then it stayed



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1 the same.

2 Q. I want to call your  
3 attention to Paragraph 5 under  
4 Section 2.2. Was extrapolation ever  
5 performed on the basis of deposition  
6 testimony alone?

7 A. I don't believe so, no.  
8 Deposition testimony, by and large,  
9 was seen as a less reliable form of  
10 evidence than actual tickets, waste  
11 tickets, responses, things of that  
12 nature, actual written documentation  
13 of waste quantities, things like  
14 that.

15 I am going to read this, if  
16 I may.

17 Q. Okay.

18 A. So there probably are  
19 instances, although I think there are  
20 few, where we use deposition  
21 testimony to give us an understanding  
22 of volume, and, again, if we had  
23 enough indirect evidence over a broad  
24 enough period of time, yes, I picked



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1 up a tanker or a wagon full of X at  
2 this facility over four or five  
3 years, and I know they operated  
4 through the entire eight-year period,  
5 in that hypothetical scenario, then  
6 we would probably extrapolate over  
7 the eight-year period.

8 To go further we would have  
9 to go into the individual companies  
10 and see, and I don't believe we did  
11 that very often at all with  
12 deposition testimony.

13 Q. Can you turn to Page 2-4 of  
14 Exhibit 3, which is one of your draft  
15 reports. It's right here.

16 A. Page 2-4?

17 Q. Yes. That doesn't look  
18 like the same page. It's Section  
19 2.3.

20 A. Are we looking at the same  
21 thing?

22 Q. It's the draft that you  
23 produced to counsel on September  
24 19th, 2006, Section 2.3.



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1           A.       Exhibit 3, Section 2.3 on  
2       Page 2-4.

3           Q.       Yes, Paragraph 6. The last  
4       sentence on Paragraph 6, "SEC found  
5       no consistent recollections," do you  
6       see that sentence?

7           A.       Right.

8           Q.       That's not in the final  
9       report. Is that still true?

10          A.       I would like to see what we  
11       put in the actual final report, and  
12       then I will give you an answer.

13          Q.       Okay.

14          A.       This is where it's  
15       possible, and we would have to go  
16       into the individual companies -- my  
17       recollection is that we did not find  
18       a lot of the deposition testimony to  
19       be what we would consider to be  
20       reliable, because there were  
21       inconsistencies.

22                    So there may have been,  
23       between this draft and the final, an  
24       instance where, in fact, we were able



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1 to rely on deposition testimony to  
2 make an extrapolation.

3 Q. But do you recall any?

4 A. I don't have a specific  
5 recollection of that, no.

6 Q. We are going to go through  
7 each of them, and we will address  
8 that when we go through them.

9 A. Okay. We're back in  
10 Exhibit 1, right?

11 Q. Your expert report, right.  
12 Section 3.1, American Cyanamid.

13 Actually, before we get  
14 there, I just want to mark one more  
15 exhibit, and it is a -- the first  
16 page of the exhibit is an e-mail from  
17 Lynn Wright to the rest of the  
18 defense counsel dated August 22nd,  
19 2006, but it attaches an e-mail from  
20 you to Lynn dated August 22nd, 2006.

21 (Hochreiter Exhibit 4 was  
22 marked for identification.)

23 BY MS. TROJECKI:

24 Q. I just want to call your



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1 attention to the second page of this  
2 e-mail?

3 A. If I may, just let me read  
4 the beginning of it first.

5 Q. Sure.

6 A. Okay, the second page?

7 Q. The fifth bullet down.

8 A. From the beginning?

9 Q. On the top of that page,  
10 the fifth bullet down, the one that  
11 starts, Ultimately.

12 A. Okay.

13 Q. What's the idea there that  
14 "The attorneys are probably already  
15 aware of this, but they may want to  
16 be thinking about what strategies  
17 they would find acceptable for the  
18 inevitable estimating algorithms we  
19 will have to develop --"

20 What's the message that is  
21 being conveyed there?

22 A. I don't know. Let me read  
23 that bullet and I will give you an  
24 answer.



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1 Q. Okay.

2 MS. WRIGHT: I'm going to  
3 object to that question, because that  
4 is outside the scope of the opinion  
5 that Mr. Hochreiter gave in this  
6 case.

7 And I'm going to instruct  
8 you not to answer that question.

9 THE WITNESS: Okay.

10 MS. TROJECKI: Okay, well,  
11 I don't think that you can instruct  
12 him not to answer. What's the basis  
13 for your instructing him not to  
14 answer a question?

15 MS. WRIGHT: Because he is  
16 not here to give an expert opinion on  
17 anything that is outside of the  
18 expert report that he has given, and  
19 that issue is not contained in his  
20 expert report. Therefore, it's an  
21 improper question.

22 MS. TROJECKI: I don't know  
23 if the issue is contained in his  
24 expert report. That's what I'm



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1 asking him about.

2 MS. WRIGHT: Well, you have  
3 the report.

4 MS. TROJECKI: I don't know  
5 what the issue is. That's what I'm  
6 asking him about. I mean, maybe you  
7 know because you worked on it with  
8 him, but I have to be able to ask him  
9 what is the issue there.

10 MS. WRIGHT: Well, you can  
11 see that the issue relates to  
12 Boarhead --

13 MS. TROJECKI: I want to  
14 have him answer.

15 MS. WRIGHT: But you can  
16 read it and see that it relates to  
17 wastes going to the Boarhead site.

18 MS. TROJECKI: If you can  
19 answer that, why can't he say that  
20 that's what it relates to.

21 MS. WRIGHT: Well, I'm  
22 telling you that it is outside of the  
23 scope and that it is an improper  
24 question.



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1 MS. TROJECKI: I have asked  
2 him many questions about what the  
3 scope of his report is, is it related  
4 to bringing wastes to the Boarhead  
5 site or not, and he has answered all  
6 those questions.

7 MS. WRIGHT: He has  
8 answered all those questions, and I  
9 have allowed him to answer those  
10 questions, but I'm not going to allow  
11 him to answer this question because  
12 it goes to --

13 MS. TROJECKI: Well, we  
14 have to call somebody then, because I  
15 don't think it is a legitimate basis  
16 to instruct him not to answer the  
17 question.

18 MS. WRIGHT: Who do you  
19 want to call?

20 MS. TROJECKI: It is  
21 directly related to his expert  
22 report. It is an e-mail to you about  
23 his process of preparing the report.

24 MS. WRIGHT: It is the

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1 preliminary process that was well  
2 before the report was produced. The  
3 report that was produced and what we  
4 ultimately provided an expert opinion  
5 on does not concern what is raised in  
6 No. 6.

7 MS. TROJECKI: I don't  
8 agree with you at all. I'm just  
9 trying to think of how to handle it.

10 MS. WRIGHT: I understand  
11 that you don't agree with me, and,  
12 obviously, I don't agree with you.

13 MS. TROJECKI: Excuse me,  
14 there's a question pending and you  
15 are whispering something to defense  
16 counsel.

17 MS. WRIGHT: She's allowed  
18 to talk to me. She's my co-counsel.

19 MS. TROJECKI: I know, but  
20 I mean there's a question pending.

21 MR. SABINO: The witness  
22 was directed not to answer the  
23 question.

24 MS. FLAX: The witness was



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1 directed not to answer the question;  
2 I am therefore allowed to go speak  
3 with Ms. Wright about an issue.

4 MS. TROJECKI: I am just  
5 going to hold off for now until I can  
6 take a break to see if we are going  
7 to call the judge or not, because I  
8 think I have no doubt that if I call  
9 the judge and say this is the  
10 question I'm asking the witness, he  
11 is going to say you have to answer  
12 the question.

13 MS. WRIGHT: I will permit  
14 Joe to answer questions about that  
15 first sentence in that last bullet.

16 THE WITNESS: Would it be  
17 okay, Amy, if you could rephrase the  
18 question?

19 MR. FACKENTHAL: Could you  
20 read the first sentence?

21 THE WITNESS: Is it okay,  
22 Amy, for me to read the first  
23 sentence?

24 BY MS. TROJECKI:



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1 Q. Yes. Go ahead.

2 A. "Ultimately will the  
3 attorneys want totals calculated for  
4 the volumes of wastes generated by  
5 each party and/or disposed of at  
6 Boarhead during the 1969 to '77 time  
7 frame."

8 MS. TROJECKI: And why is  
9 it that you are permitting him to  
10 answer a question about that and not  
11 the rest of it?

12 MS. WRIGHT: Because I  
13 think the rest of it is not contained  
14 in his expert report and it is  
15 outside of the scope of the opinion  
16 that he gave.

17 MS. TROJECKI: How is the  
18 first part of it contained in his  
19 expert report?

20 MS. WRIGHT: Well, you  
21 know, I'm trying to reach a  
22 compromise here, so I'm allowing him  
23 to answer the first question because,  
24 as I said, I have allowed him to



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1 answer it before.

2 And we are getting somewhat  
3 repetitive, but if you want him to  
4 answer it again, I'm going to allow  
5 him to answer it again.

6 MS. TROJECKI: Let me just  
7 take a minute to read it.

8 BY MS. TROJECKI:

9 Q. Let's just leave it for now  
10 and I will come back to it.

11 A. Okay, that's fine.

12 Q. Okay, let's turn to Section  
13 3.1 of your report.

14 A. Okay.

15 Q. In the first paragraph  
16 under Section 3.1.1.1, you describe  
17 American Cyanamid's manufacturing  
18 operations. Do you see that?

19 A. I do.

20 Q. And what is the basis for  
21 your statements in that first  
22 paragraph under Section 3.1.1.1?

23 A. If you'll notice in that  
24 paragraph, we make reference in two



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1 places to a document called American  
2 Cyanamid 1993. So if we go to  
3 Section 6 of the expert report and  
4 look under American Cyanamid, we have  
5 for 1993 the response to USEPA May  
6 26, 1993 correspondence, includes  
7 attachments July 2nd, 1993.

8 So that is the source of  
9 that information.

10 Q. And I am going to hand you  
11 a document that is American  
12 Cyanamid's July 2nd, 1993 letter to  
13 U.S. Environmental Protection Agency,  
14 and it's Bates stamped CYTC00031, and  
15 it goes to CYTC00038.

16 A. Do you want to put that --

17 Q. I don't want to have it  
18 marked.

19 A. Okay.

20 Q. If you look under Question  
21 No. 1, "American Cyanamid's Bound  
22 Brook, New Jersey facility currently  
23 manufactures bulk pharmaceuticals."  
24 Do you see that?



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1 A. Yes.

2 Q. And "From 1969 to 1977 the  
3 plant manufactures dyes, pigments,  
4 rubber chemicals, elastomers, organic  
5 intermediates, and bulk  
6 pharmaceuticals." Do you see that?

7 A. Yes, I do.

8 Q. And that's essentially the  
9 exact same sentence that is the first  
10 page or the first sentence under  
11 Section 3.1.1 of your report,  
12 correct?

13 A. It contains many of the  
14 same words, yes. I believe, at least  
15 in part, that's where that came from,  
16 yes.

17 Q. So what I have just read to  
18 you is the basis for your statement  
19 under the first sentence of your  
20 Section 3.1.1, correct?

21 A. If you will notice, I  
22 didn't make a specific page  
23 reference, so the reference in both  
24 places refers to the entirety of this



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1 letter. So there may be other  
2 statements that reinforce or add to  
3 the paragraph that you just pointed  
4 out.

5 So without reading this  
6 entire thing, I don't know that I can  
7 answer your question with confidence.

8 Q. But this letter is  
9 certainly the basis for how you knew  
10 what was manufactured in American  
11 Cyanamid; is that correct?

12 MS. WRIGHT: Objection as  
13 to form.

14 THE WITNESS: Yes. We  
15 reference that as our source.

16 BY MS. TROJECKI:

17 Q. And the second sentence,  
18 "During the late 1970s and early  
19 1980 --" is the basis for that  
20 statement on the page that's marked  
21 CYTC00032, the last sentence of that  
22 page -- "the Bound Brook plant went  
23 through extensive downsizing during  
24 the late 1970s and early 1980s and



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1 many product lines were  
2 discontinued." Do you see that?

3 A. Yes, it's almost word for  
4 word. So, yes, I would say that's  
5 true.

6 MS. FLAX: I'm going to ask  
7 that this document be marked as an  
8 exhibit.

9 MR. PETTIT: Melissa, were  
10 the attachments marked too? There's  
11 substantial attachments.

12 MS. FLAX: Do you just want  
13 to put on the record what the exhibit  
14 is and what the Bates range is?

15 MS. TROJECKI: I already  
16 did.

17 MS. FLAX: Again. Well, I  
18 don't think the record is clear  
19 because the document was not marked  
20 at the time she was asking the  
21 questions.

22 MS. TROJECKI: Exhibit B  
23 is -- can you read the Bates  
24 numbers? Exhibit 5, I'm sorry. We



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1 just marked at the request of Melissa  
2 Flax as Exhibit 5 the document with  
3 the Bates numbers CYTC000031 and  
4 ending with CYTC000038.

5 MR. PETTIT: This is Jeff  
6 Pettit. I want to note for the  
7 record that the exhibit is  
8 incomplete. It does not have  
9 attachments A and B, which are quite  
10 substantial of things that  
11 Mr. Hochreiter had to review.

12 (Hochreiter Exhibit 5 was  
13 marked for identification.)

14 BY MS. TROJECKI:

15 Q. Okay, the exhibit doesn't  
16 include the attachments, but we are  
17 just speaking about now the first  
18 paragraph under Section 3.1.1.1, and  
19 I just want to confirm, then, that  
20 the basis for the two statements in  
21 that paragraph are the sentences that  
22 I read to you from Exhibit 5; is that  
23 correct?

24 MS. WRIGHT: Objection.



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1 It's been asked and answered. He  
2 said he relied on the 1993 or Exhibit  
3 5 in its entirety, which would  
4 include the attachments and the  
5 entire letter.

6 BY MS. TROJECKI:

7 Q. But you did also testify  
8 that the sentences were almost word  
9 for word, correct?

10 A. I did.

11 Q. Now, let's look at the  
12 1994.

13 MS. TROJECKI: I'm going to  
14 mark as Exhibit 6 American Cyanamid's  
15 April 28th, 1994 letter to USEPA. It  
16 has Bates numbers CYTC000043 to  
17 CYTC000050.

18 (Hochreiter Exhibit 6 was  
19 marked for identification.)

20 BY MS. TROJECKI:

21 Q. And the list --

22 A. If you will give me one  
23 second.

24 Q. Sure.



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1 A. Okay.

2 Q. The list that you -- the  
3 first bulleted list on Page 3-1 of  
4 your expert report starting with  
5 Research --

6 A. Yes.

7 Q. -- does the information in  
8 that list come from Page 2 of Exhibit  
9 6, the numbered Page 2 at the bottom?

10 A. Oh, okay, thank you. I'm  
11 not sure it does.

12 Q. Why do you think it doesn't  
13 come from the --

14 A. Well, I'm looking at  
15 Research, Administrative, and  
16 Analytical Labs, and the list that  
17 you have asked me to look at includes  
18 individual chemicals and waste types,  
19 so it's apples and oranges.

20 Q. I'm referring to the list  
21 at the top of Page 2.

22 A. Oh, I'm sorry, I thought  
23 you said the bottom. I apologize.

24 Q. That's okay.



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1           A.       Boy, it sure looks that  
2 way, doesn't it? Yes, I would agree.

3           Q.       And going down to the Waste  
4 Generation and Handling section of  
5 your report, 3.1.1.2.

6           A.       Okay.

7           Q.       Under that section, there  
8 are three separate bulleted lists of  
9 waste streams. The first one begins  
10 at the bottom of Page 3-1 and ends  
11 with Isoprophanol. Do you see that?

12          A.       Yes.

13          Q.       The second one, in the  
14 middle of Page 3-2, it starts with  
15 Sodium Dichromate and ends with Scrap  
16 Paint Chemical.

17          A.       Yes.

18          Q.       And the third waste that  
19 I'm referring to starts at the bottom  
20 of Page 3-2 with Dyes Department and  
21 ends with Waste Solvents,  
22 Monochlorinated Waste Organics, and  
23 Flammable.

24          A.       Okay, it jumps over to



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1       P h a r m a c e u t i c a l s .

2               Q .       R i g h t .

3               A .       A l l   r i g h t ,   I   s e e   t h o s e  
4       l i s t s .   A n d   w e   a r e   s t a r t i n g   w i t h   t h e  
5       I s o p r o p h a n o l ?

6               Q .       W e   a r e   s t a r t i n g   w i t h   t h e  
7       f i r s t   l i s t ,   t h e   o n e   t h a t   b e g i n s   o n  
8       P a g e   3 - 1 .   I t   s t a r t s   w i t h   3 N O X   u n d e r  
9       t h e   I n t e r m e d i a t e s .

10              A .       O k a y .   A l l   r i g h t .

11              Q .       C a n   y o u   t u r n   t o   w h a t   w e  
12       m a r k e d   a s   E x h i b i t   5 .   T h a t  
13       i n f o r m a t i o n   i n   t h e   f i r s t   l i s t ,   d o e s  
14       t h a t   c o m e   f r o m   t h e   s e c o n d   p a g e   o f  
15       E x h i b i t   5 ?

16              A .       I   w a n t   t o   m a k e   s u r e   I ' m  
17       a n s w e r i n g   t h e   q u e s t i o n   a c c u r a t e l y .  
18       I n   m y   e x p e r t   r e p o r t ,   E x h i b i t   1 ,  
19       S e c t i o n   3 . 1 . 1 . 2 ,   a t   t h e   b o t t o m   o f   t h e  
20       p a g e   t h e   t h r e e   i t e m s   l i s t e d   u n d e r  
21       I n t e r m e d i a t e s   D e p a r t m e n t ?

22              Q .       A n d   c o n t i n u i n g   o n t o   P a g e  
23       3 - 2 .

24              A .       H o w   f a r   i n t o   3 - 2 ?



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1 Q. Well, if you look it is  
2 almost a word-for-word compilation,  
3 and I just want to confirm that the  
4 material that is in your expert  
5 report, in Exhibit 1, that you got  
6 that from the second page of Exhibit  
7 5?

8 A. I believe so. I mean, I'm  
9 seeing right now down to  
10 Isopropanol. And when we go into  
11 the next list, I don't see that here  
12 but I'm sure it's somewhere else.

13 Q. So the next list is the one  
14 that begins with Sodium Dichromate,  
15 and did you get the information in  
16 that list from Exhibit 6, Page 2?

17 A. This was -- it appears to  
18 be the source for that list, although  
19 there are a couple differences.

20 Q. Okay, what are the  
21 differences?

22 A. We, I believe, did not  
23 include in my expert report poisonous  
24 flammable solids, which exists in the



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1 Cyanamid letter marked Exhibit No. 6,  
2 because, frankly, poisonous flammable  
3 solids doesn't have a definition in a  
4 hazardous substance parlance, so I  
5 don't believe we put that in.

6 Q. For that reason?

7 A. Right.

8 Q. Any other differences  
9 between these two lists?

10 A. It would take my a little  
11 bit of time. I mean, I see that BAA  
12 sludge is not identified,  
13 butylacetanilide. We actually  
14 identified what that is. It's not  
15 stated here.

16 Q. You actually wrote out BAA  
17 sludge is contained on the list on  
18 Exhibit 6, but the acronym isn't  
19 spelled out, correct?

20 A. The name isn't spelled  
21 out. The acronym exists but not the  
22 name, and we provided the name.

23 Q. Are there any other  
24 differences between your list and the



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1 list --

2 A. I mean, I would have to,  
3 you know, really look at this  
4 closely. It doesn't appear that  
5 there are any others that jump out at  
6 me, but if there are it's because I'm  
7 just missing it.

8 Q. So the source of the  
9 information in Page 3-2 of your  
10 report is Exhibit 6, correct?

11 A. It certainly appears to be,  
12 yes.

13 MS. TROJECKI: Did you want  
14 to say something?

15 MS. WRIGHT: Yes, I do.  
16 There's another reference on Page 3-1  
17 for a source material. But I was  
18 also wondering, just so that it might  
19 be more efficient, if you know that  
20 there's a difference why don't you --

21 MS. TROJECKI: No, I didn't  
22 know there was a difference. I  
23 thought they were word for word.  
24 They appear to be word for word.



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1 BY MS. TROJECKI:

2 Q. Okay, getting to the third  
3 list, the December 15th, 1977  
4 memorandum authored by Sid Frankel  
5 provides an extensive list. You cite  
6 that as the source for the list of  
7 wastes that are contained on Page 3-3  
8 of your report, correct?

9 A. Starting at the bottom of  
10 3-2 and working through 3-3, yes.

11 Q. So I have here a copy of a  
12 note from Sid Frankel dated December  
13 15th, 1977. I just want to show it  
14 to you before I mark it as an exhibit  
15 and ask you if that's the source of  
16 the information that's contained on  
17 Paragraph 3.3 of your report, Page  
18 3-3.

19 A. Yes, this is an extensive  
20 list, the December 15th, 1977 letter  
21 from Sid Frankel, so I am finding  
22 consistencies in the lists, but for  
23 me to say with absolute certainty  
24 that everything in my expert report



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1 in this grouping of chemicals came  
2 solely from this, I believe it's the  
3 case because that's the reference  
4 that we made, but I'm not in a  
5 position now to be able to say  
6 everything cross-correlates  
7 perfectly.

8 Q. I'm just saying you do have  
9 to state the basis for your  
10 information in your report, and there  
11 wasn't a citation to this list in  
12 your report and that's why I'm asking  
13 you the question. It references a  
14 December 15, 1977 Cyanamid memorandum  
15 but there is not a citation to --

16 A. Okay. That's an oversight  
17 on my part, and I apologize for that,  
18 if we didn't put that in.

19 Q. Can you just wait until I'm  
20 finished, for the court reporter.

21 A. Oh, I'm sorry. Okay.

22 So that's one reference, I  
23 guess, that didn't get into Section  
24 6.



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1 Q. But this document that I  
2 just handed you, which is the  
3 December 15th, 1977, is the source of  
4 the information that's contained on  
5 Page 3-3 of your report, correct?

6 A. I believe it is.

7 MS. TROJECKI: Do you want  
8 to mark this as the next exhibit.

9 (Hochreiter Exhibit 7 was  
10 marked for identification.)

11 BY MS. TROJECKI:

12 Q. What is the difference  
13 between the first list of wastes that  
14 we were discussing and the second  
15 list?

16 A. Okay, if you would be good  
17 enough just to again refresh me on  
18 what is first and second in this  
19 definition.

20 Q. Okay. The first list is  
21 the list that starts on Page 3-1, the  
22 bottom of Page 3-1.

23 A. Okay.

24 Q. And the second list is the



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1 second list of bulleted items in the  
2 report that starts with Sodium  
3 Dichromate.

4 A. Okay.

5 Q. In other words, are some of  
6 the wastes that are talked about in  
7 the first list more specifically  
8 referenced in the second list, are  
9 they the same chemicals, are they  
10 different chemicals?

11 A. The intent of listing both  
12 of these is there is three -- they  
13 are basically three sources of  
14 information that collectively give us  
15 the best insight that we have on what  
16 the manufacturing processes were for  
17 the period of interest at American  
18 Cyanamid.

19 Could there be overlap?  
20 Yes, I think there probably could  
21 be. In fact, I see 3NOX in both  
22 lists, so certainly in that regard  
23 there is -- the BAA sludge is in both  
24 lists.



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1 Q. Where is the 3NOX on the  
2 second list?

3 A. Page 3-3 at the very top,  
4 the first bullet.

5 Q. That's the third list. I'm  
6 just asking about the first and  
7 second so far. Let's make sure we  
8 are getting the list identified.

9 A. Then I need to better  
10 understand what list we are talking  
11 about. And I can't mark on this,  
12 right?

13 Q. You can mark on it.

14 A. All right. Tell me what  
15 list number one was.

16 Q. On the bottom of Page 3-1  
17 it starts Intermediate Department.  
18 That's list one. And that goes up  
19 until Isopropanol.

20 A. All right.

21 Q. Then there's a second list  
22 that starts with Sodium Dichromate  
23 and ends with Scrap Paint Chemical,  
24 and there's a separate reference for



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1 that list.

2 A. Okay.

3 Q. Then there's a third list  
4 that begins on the bottom of 3-2 that  
5 starts with Dyes Department.

6 A. Okay.

7 Q. And that goes --

8 A. To waste solvents?

9 Q. It actually, because I  
10 believe the reference includes also  
11 wastes listed for the pigments  
12 department, includes pigments, so it  
13 goes to the end of that page, the end  
14 of Page 3-3, so that's list three.

15 So what I'm trying to do is  
16 get a feel for what are these three  
17 different lists, what are they lists  
18 of. So the question that I asked is  
19 what's the difference between list  
20 one and list two, let's start with  
21 that.

22 A. They have different --  
23 let's see, list one and list two. I  
24 would have to go into the '93 and '94



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1 documents to be able to give you an  
2 exact reason, because I think what  
3 you are asking is why do we have  
4 these listed as, as you are calling  
5 them, two separate lists, although in  
6 reality they are one, two, three,  
7 four separate lists.

8 We have the intermediate  
9 department's waste, we have the  
10 rubber chemicals department wastes  
11 and then we have the pharmaceutical  
12 department wastes all in list one,  
13 but, in essence, they are segmenting  
14 wastes by departments.

15 And then there is a list of  
16 waste streams from the entire  
17 facility, department irrelevant, that  
18 is in what we are calling list two.  
19 So without going through these  
20 documents in detail, why we ended up,  
21 you know, breaking out certain wastes  
22 associated with the departments,  
23 because it was reported that way.

24 The second list, however,



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1 is more general as I read it and, you  
2 know, representative of waste coming  
3 from the facility, not specifically  
4 related to a particular department,  
5 and that's simply the way that the  
6 parent documents reported this. So  
7 we were spitting it back at them.

8 Q. Are you able to say with  
9 respect to list two which of those  
10 wastes came from which department at  
11 American Cyanamid?

12 A. We could only do that in  
13 instances where the Cyanamid  
14 documentation actually told us that a  
15 waste came from a particular  
16 department. So if they didn't tell  
17 us that, we weren't able to identify  
18 it as coming from a particular  
19 department.

20 Now, again, if I could go  
21 back and spend time looking at the  
22 documents, we might be able to find  
23 whether there is references to  
24 specific departments. I don't

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1 believe, from my recollection, that  
2 there is.

3 Q. But sitting here today, you  
4 are not able to say whether the  
5 wastes listed in list one are the  
6 same as some of the wastes that are  
7 listed in list two; is that correct?

8 A. All right, well, that, to  
9 me, is a slightly different question.

10 We have in list one spent  
11 waste acid, the second bullet. We  
12 have waste spill bottoms in list  
13 two. Could I say with certainty that  
14 they are completely different? I  
15 believe they are because a spill  
16 bottom comes from a different  
17 process, but could there be waste  
18 acid in the spill bottoms? I suppose  
19 it's possible.

20 We are working with the  
21 information that we were provided.

22 Q. Are all of the items that  
23 are bulleted in list two, are they  
24 all waste products?



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1           A.       They are listed as such,  
2           and they were identified in the  
3           Cyanamid parent documents as waste  
4           streams.

5           Q.       But if you refer to the  
6           1994 response, which you cite as a  
7           source for this list, which I think  
8           we marked as Exhibit 6 --

9                   MS. WRIGHT:   When you are  
10           talking about lists, you talking  
11           about list two?

12                   MS. TROJECKI:   Yes, list  
13           two.

14           BY MS. TROJECKI:

15           Q.       If you look at Page 2 of  
16           Exhibit 6 -- actually, Page 3.   Page  
17           3 sets out American Cyanamid's  
18           response to the question that EPA  
19           raised asking about these particular  
20           products or these particular  
21           substances, and you will see American  
22           Cyanamid's response to several of  
23           these items is that it is a product  
24           manufactured by the OCD Division at



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1 the Bound Brook plant.

2 If you look at, for  
3 instance, the second -- under  
4 subparagraph B on Page 3 of Exhibit  
5 6, "Methotrexate - This product is a  
6 bulk pharmaceutical." And you have  
7 it on your report as being a waste.

8 A. Okay.

9 Q. So I just want to see if  
10 that was an oversight on your part,  
11 or if it is a waste stream, or why it  
12 wasn't included in the list of  
13 wastes.

14 A. Well, the question which  
15 presumably came from EPA, "Your July  
16 2nd, 1993 response identifies several  
17 of the waste streams generated by  
18 your Bound Brook facility during the  
19 time period. However, the  
20 documentation accompanying the  
21 response indicates that Jonas hauled  
22 many wastes from your facility that  
23 you did not discuss in your response.  
24 Those wastes include -- "



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1                   So the EPA has taken a  
2 position that they had documentation  
3 presumably from Jonas' files that  
4 these were taken off site as wastes.

5           Q.       And the fact that American  
6 Cyanamid responded to that question  
7 by saying that certain products were  
8 actually bulk pharmaceuticals or  
9 product manufactured, does that  
10 change your opinion at all?

11          A.       I don't think so. I mean,  
12 it's possible for a product to also  
13 be a waste. In fact, it's likely  
14 that if you are going to have  
15 off-spec product, product that  
16 doesn't conform to whatever the  
17 criteria are, that it is going to end  
18 up as waste.

19                   So it's entirely possible  
20 that they are both correct, that it  
21 is a product and it is also a waste.

22          Q.       Just to be clear, the only  
23 reason that you are saying that it is  
24 a waste versus a product is because



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1 EPA characterized it as such in  
2 their --

3 A. Right, and they made  
4 reference to documentation that they  
5 had.

6 Q. Did you see that  
7 documentation or did you ever do an  
8 independent analysis of that  
9 documentation?

10 A. If we were given that  
11 document, then we saw it. If we  
12 weren't given that document, we did  
13 not see it. But in making this list,  
14 we simply used this document.

15 Q. So you took it at face  
16 value?

17 A. We were comfortable at face  
18 value, yes.

19 (Recess taken)

20 MS. WRIGHT: Can I  
21 interrupt your flow of question? I  
22 wanted to go back to Exhibit 4 and  
23 the question that I objected to. I  
24 had it backwards.



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1                   It was the first sentence  
2                   that I don't want Joe to speak to  
3                   because he is not going to offer an  
4                   opinion on that, but if you want to  
5                   ask questions about the second  
6                   sentence in the last bullet of  
7                   Exhibit 4, that's fine.

8                   MS. TROJECKI: That's good,  
9                   because we were ready to call the  
10                  judge. I'm only kidding.

11                  THE WITNESS: I'm sure you  
12                  would have gotten him on the first  
13                  try, too.

14                  BY MS. TROJECKI:

15                  Q.       We were talking before the  
16                  break about the three lists that we  
17                  have defined under Section 3.1.1.2 of  
18                  your report.

19                  A.       Yes.

20                  Q.       And we talked about what  
21                  the difference is between the first  
22                  and the second list.

23                  So can you tell me briefly  
24                  with respect to the third list, is it

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1 the same general answer that you  
2 really don't have an opinion as to  
3 whether there is duplication or not,  
4 you kind of just went off of the  
5 documents?

6 A. We went off the documents,  
7 and there is -- particularly between  
8 list two and three, the example that  
9 I mentioned previously, the BAA  
10 sludge is listed in both, I believe,  
11 both lists, and the MNB recovery  
12 sludge is listed on both, and I'm  
13 sure there are probably a few others.

14 These, I don't believe,  
15 were ever intended to be completely  
16 exclusionary.

17 Q. It was just three lists  
18 from three sources of information; is  
19 that correct?

20 A. That's my recollection,  
21 yes.

22 Q. And you didn't do any  
23 independent analysis or research of  
24 any kind to explore or determine what

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1 wastes came from American Cyanamid,  
2 other than what was on the three  
3 documents that we discussed; is that  
4 correct?

5 A. We didn't do any  
6 independent research. Whether this  
7 was the only document -- I mean this  
8 is certainly -- these are the  
9 documents that we just made exhibits  
10 that we cited. Were there other  
11 documents that reinforced our  
12 understanding of wastes that came  
13 from American Cyanamid Bound Brook,  
14 it's possible, but these are the ones  
15 that we cited because --

16 Q. But those other documents  
17 are not contained in your report  
18 anywhere, are they?

19 A. Well, I mean, there's a  
20 number of reports -- you know, we  
21 have a list of documents in Section 6  
22 that we considered. We didn't make  
23 specific text references in every  
24 single location to every document

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1 that might have given us an  
2 understanding of site conditions, for  
3 example, or wastes generated.

4 These were the predominant  
5 ones, the ones we just made exhibits  
6 were the predominant documents that  
7 we used to create this section of the  
8 expert report, but there may have  
9 been other documents that maybe gave  
10 us reinforcing knowledge or something  
11 of that nature.

12 Again, anything that we  
13 referenced is in Section 6.

14 Q. Except for Exhibit 7.  
15 Right?

16 A. Yes. Although it's  
17 referenced in the text of the report,  
18 we omitted it inadvertently in  
19 Section 6.

20 Q. But the documents that we  
21 marked as Exhibits 5, 6, and 7 are  
22 almost word for word from the three  
23 lists that are in your report,  
24 correct?

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1 MS. WRIGHT: Objection.

2 Asked and answered.

3 THE WITNESS: They are  
4 substantially equivalent.

5 BY MS. TROJECKI:

6 Q. I want to call your  
7 attention to Table 1. -- or 1a in  
8 Appendix B of your report.

9 A. Okay.

10 Q. I just want to make sure  
11 I'm clear as to where you got the  
12 information that's contained in that  
13 table.

14 A. Okay.

15 Q. We are going to have to  
16 flip back and forth a little bit  
17 here.

18 A. Between the text and the  
19 table?

20 Q. And the table.

21 A. All right. That's fine. I  
22 will keep the text open. Actually, I  
23 haven't taken any notes yet, so I'm  
24 going to --



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